No. 90-34

AUG 2 1990

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

EXXON CORPORATION,

Petitioner,

—v.—

CENTRAL GULF LINES, INC., *in personam*, and the M/V GREEN HARBOUR (ex WILLIAM HOOPER) *in rem*, her engines, boilers, tackle, etc. and a certain Letter of Credit No. P 621208 dated December 26, 1984 issued by the Chase Manhattan Bank, N.A., *in rem*,

Respondents.

OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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QUESTIONS PRESENTED

1. Is there a conflict between the District Court's decisions, as affirmed by the Court of Appeals for the Second Circuit, with regard to admiralty jurisdiction over a claim of a general agent for shoreside services, and the decisions of the Fifth and Ninth Circuits?

2. Should this Court overrule or limit its opinion in *Minturn v. Maynard*, 58 U.S. (17 How.) 477 (1854), which denied admiralty jurisdiction to an agent, in order to benefit Exxon?

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STATEMENT

Respondent, Central Gulf Lines, Inc., respectfully requests that this Court dismiss the Petition for a Writ of Certiorari herein, for the reasons that follow.

FACTUAL STATEMENT OF THE CASE

I. The Facts

The United States flag vessel, M/V GREEN HARBOUR (ex WILLIAM HOOPER) ("the vessel"), was owned by

respondent, Central Gulf Lines, Inc. ("Central Gulf") which had chartered the vessel to Waterman Steamship Corporation ("Waterman") under a 12-year bareboat charter party. Waterman employed the vessel for common carriage of goods in its American flag fleet between various ports in the United States and the Middle East, including Jeddah, Saudi Arabia (A-4, A-5, A-23, A-24).

Exxon Corporation ("Exxon") and Waterman had, for almost 40 years, been parties to an agreement pursuant to which Exxon procured supplies of bunker fuel for Waterman on an exclusive worldwide basis. Under this agreement, Exxon was to either (1) supply fuel directly in those ports where Exxon maintained its own bunker fuel facilities, or (2) arrange supplies through local suppliers in those ports where Exxon could not supply Waterman's vessels directly. To facilitate Waterman's payments for these supplies, Exxon extended an extensive credit line to Waterman (A-4, A-5, A-23, A-24).

In order to supply its customers with fuel in Jeddah, Saudi Arabia, Exxon entered into an agreement with a local supplier, Arabian Marine. Pursuant to this agreement, Exxon was to solicit and arrange for the sale of marine fuel by Arabian Marine to vessels having bunkering requirements at the port of Jeddah. In return for its services, Exxon received a commission. It was explicitly stated in the Exxon/Arabian Marine agreement that title to fuel supplied by Arabian Marine would pass directly from Arabian Marine to the customer receiving such fuel (A-5, A-6, A-24).

On October 26, 1983 Arabian Marine supplied fuel to the vessel and subsequently invoiced Exxon, giving Exxon a credit for the commission earned (A-9). Exxon, in turn, invoiced Waterman for the full value of the fuel supplied, including the commission. Thereafter, Waterman filed for protection pursuant to Chapter XI of the Bankruptcy Act (A-25).

II. The Proceedings Below

Although respondent agrees with the petitioner's general outline of the proceedings below, petitioner's synopsis of the conclusions of the District Court warrants correction and clarification. The District Court's conclusion that Exxon's claim was not within the Court's admiralty jurisdiction only partially relied upon this Court's decision in *Minturn v. Maynard*, 58 U.S. (17 How.) 477 (1854), as followed by the Second Circuit in *Peralta Shipping Corp. v. Smith & Johnson (Shipping) Corp.*, 739 F.2d 798 (2d Cir. 1984), *cert. denied*, 470 U.S. 1031 (1985), *reh'g denied*, 471 U.S. 1112 (1985). More importantly, the District Court found that the services rendered by Exxon constituted shoreside preliminary services and, thus, were outside of admiralty jurisdiction. In so doing, the District Court gave great weight to the terms and conditions of the Exxon/Arabian Marine supply contract, in accordance with which Exxon was to solicit customers and receive a commission, without the title of ownership of the fuel passing to Exxon (A-24, A-30, A-5, A-9, A-17). This conclusion, strengthened by the *Minturn* holding that an agency contract is considered non-maritime, led the District Court to decide that Exxon's claim did not fall within the Court's admiralty jurisdiction, a finding which was affirmed by the United States Circuit Court for the Second Circuit.

REASONS FOR DENYING THE WRIT

I. The District Court decisions, based in part upon *Peralta* and *Minturn*, are not in conflict with the decisions of the Fifth, Ninth or Eleventh Circuits.

The Fifth Circuit in *Hadjipateras v. Pacifica, S.A.*, 290 F.2d 697 (5th Cir. 1961) held that admiralty jurisdiction extended to a suit by the owners of a vessel against her managing agent for breach of a contract pursuant to which the managing agent was to "*operate the vessel*, obtain freight or freight engagements, collect the freight monies, and after deducting all *operating expenses*, remit the balance to the

owners." *Hadjipateras, supra*, at p. 700 (emphasis added). Such an operating contract is distinguishable from the Exxon/Waterman contract which provided solely for the procurement of bunkers. As found by the District Court, Exxon's role in the transaction was strictly shoreside, ending before the bunkers reached the vessel (A-30). Indeed, Exxon does not claim that it "operated" the vessel. Moreover, the agency contract in *Hadjipateras* can also be distinguished from the agency contract in *Peralta* where, in the former, the agent was to act as managing agent for one vessel for a stated period of time, while in the latter, the sub-agent was to perform services for all vessels that the company operated within an extended multi-port area over an extended time period.

The Ninth Circuit, in *Hinkins Steamship Agency, Inc. v. Freighters, Inc.*, 351 F. Supp. 373, aff'd 498 F.2d 411 (9th Cir. 1974), extended admiralty jurisdiction to a husbanding agent which made various arrangements for one vessel in one particular port for one call. In the case at bar, the District Court emphasized the long-standing relationship between Exxon and Waterman (A-12, A-13, A-20, A-23). In *Hinkins*, the District Court implied that it would not have granted admiralty jurisdiction had the case involved "a continuing relationship," 351 F. Supp. at 375. Thus, the *Hinkins* decision cannot be said to conflict with *Peralta* or the case at bar. Application of the *Hinkins* criteria to Exxon's claim would, in all likelihood, have resulted in a denial of admiralty jurisdiction.

Bearing in mind the factual differences in the contractual agreements involved in the cases decided in the Fifth, Ninth and Second Circuits, the standard for determining whether an agent's claim falls within admiralty jurisdiction, as applied by the District Court below, is not in conflict with the standards applied by the Fifth and Ninth Circuits. Moreover, the District Court's finding that Exxon's role was strictly "shoreside" and thus preliminary, makes it unnecessary for this Court to address the question of *Minturn*'s viability.

Finally, the Eleventh Circuit, by petitioner's own admission, is *not* in conflict with the Second Circuit. The Eleventh Circuit Court of Appeals, in *E.S. Binnings, Inc. v. M/V SAUDI RIYADH*, 815 F.2d 660 (11th Cir. 1987), adopted the Second Circuit's view of *Minturn*. More recently, the Eleventh Circuit reaffirmed that, as a general rule, certain landside marine support services, including the procurement of supplies, are preliminary services not cognizable in admiralty, *Nehring v. Steamship M/V POINT VAIL*, 901 F.2d 1044, 1049 (11th Cir. 1990).

II. Overruling or limiting *Minturn* would not benefit the uniformity of Maritime law nor would it increase protection for suppliers of necessaries to vessels.

In *Minturn*, this Court established a general demarcation as to what contracts are cognizable in admiralty. The *Minturn* decision has functioned as a guideline for courts in various circuits, which have applied its holding on a case by case basis. While there are a few contracts which seem close to the jurisdictional dividing line, what appears to be disarray, to some commentators, has a delicate and predictable order, created by the courts, *Sisson v. Rudy*, 58 U.S.L.W. 4941, 4945 (U.S. June 25, 1990).

To overrule or even limit the *Minturn* decision, would open the Federal Courts to a plethora of actions, involving shoreside contracts, which would be better left decided by the state courts. Uniformity of law is not advanced by extending admiralty jurisdiction to an agency contract, simply because it speaks of services rendered to ships. 1 S. Friedell, *Benedict on Admiralty*, § 182 (7th ed. 1989).

Finally, Exxon argues that *Minturn* fails to protect those who provide necessary services or supplies to vessels, in an attempt to create an issue of public importance and fit this case within the Court's general principle that Writs of Certiorari will only be granted in those cases where the principle involved is important to the public and not just to the parties. *Layne & Co. v. Western Well Workers*, 261 U.S. 387,

393 (1923). However, the decision below turns upon its own facts and will effect few other suppliers of necessaries, due to the unique contractual provisions contained in the Exxon/Waterman and Exxon/Arabian Marine agreements. In view of the facts, as found by the District Court, protection of Exxon will not come from overturning or limiting *Minturn*. Exxon can protect itself in the future by rewriting its procurement agreements. In addition, Exxon and other agents who procure necessaries and supplies can protect their interests by recognized means. *Tramp Oil & Marine Ltd. v. M/V MERMAID I*, 630 F. Supp. 630, 633 (D.P.R. 1986), aff'd. 805 F.2d 42 (7th Cir. 1986).

CONCLUSION

Certiorari to the United States Court of Appeals for the Second Circuit should be denied.

Respectfully submitted,

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APPENDIX

Appendix

International Shipholding Corporation

St. Rose Fleeting Co., Inc.

N. W. Johnsen & Co., Inc.

LCI Shipholdings, Inc.

Adrian/Shipping, Ltd.

Netherlands Maritime Agencies, Ltd.

Netherlands Freight Agency

Material Transfer, Inc.

Florida Barge Lines

Bahulu Shipping

Bay Insurance

Probo Bangor Shipping Pte. Ltd.

Marco Shipping Pte., Ltd. (Singapore)

Marco Shipping Pte., Ltd. (Netherlands)

New Combo, Inc.

New Combo Ships Pte., Ltd.

Second Probo, Inc.

Gulf South Shipping Pte., Ltd.

Rodriquez Sons Co., Inc.

Forest Lines, Inc.

Cypress Auto Carriers, Inc.

Waterman Steamship Corporation